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No. 02-1792

IN THE

Supreme Court of the United States

CARL E. JONES, KATHRYN L. JONES, LARRY TREADWAY, KASSIE TREADWAY, DAVID C. JONES, SYLVIA J. JONES, JERRY PURCELL, MARGIE PURCELL,

Petitioners,

v.

BUFFALO TOWNSHIP,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA, WESTERN DISTRICT

BRIEF IN OPPOSITION

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Respondent, Buffalo Township, requests that this Court deny the Petition for Writ of Certiorari filed by Carl E. Jones, et al. seeking review of the decision of the Supreme Court of Pennsylvania entered in this case on December 31, 2002.

COUNTERSTATEMENT OF THE CASE

Buffalo Township is a Pennsylvania second-class township located in the southeastern corner of Butler County, approximately 30 miles northeast of Pittsburgh. In the 1860s, the Western Pennsylvania Railroad Company (which subsequently became a part of the Consolidated Rail Corporation (hereinafter "Conrail")), obtained deeds, rights-of-way, and easements over privately owned property to construct a railroad. The railroad acquired these interests in various manners, sometimes through condemnation, sometimes through fee simple deeds, and sometimes through right-of-way agreements. The line in question is 20.2 miles long and runs from Freeport, Armstrong County (near Buffalo Township) to Butler, Butler County (hereinafter "the Butler Line").

In the mid 1980's, Conrail determined that the Butler Line was no longer profitable and began discussions with Buffalo Township officials concerning conversion of the line into a "rails to trails" facility. In connection with these discussions, Conrail undertook the formal process of seeking Interstate Commerce Commission (hereinafter "ICC") approval to discontinue service on the line. Buffalo Township filed a request for interim trail use pursuant to 49 C.F.R. § 1152.29(a). After consulting with Conrail and numerous agencies of the Pennsylvania government, Buffalo Township officials concluded that it was not necessary to engage in this expensive process in order to establish a trail, and withdrew its request for interim trail use.

In the spring of 1990, in accordance with its plan with Conrail, Buffalo Township had a salvage company, B. Sykes Ltd., purchase the rails and ties and obtain a deed from Conrail. B. Sykes Ltd. then deeded the property directly to Buffalo Township while continuing to remove the rails and ties over the next three years. Buffalo Township then assumed all financial, legal, and managerial responsibility for the corridor.

In both the deed from Conrail to B. Sykes Ltd., and the deed from B. Sykes Ltd. to Buffalo Township, Conrail reserved the right to re-enter the land for the purpose of conducting future railroad operations. As a result, Buffalo Township's responsibility for the corridor is subject to Conrail's right to reactivate railroad service.

The Petitioners, Carl E. Jones, et al., who own land bordering the corridor, erected blockades to keep the public from using the trail. Buffalo Township sought an injunction. At trial, Buffalo Township presented the deeds to the property and various types of evidence concerning the arrangements made with Conrail, Buffalo Township, neighboring townships, and representatives of various Pennsylvania state agencies. Petitioners Jones et al. did not present evidence pertaining to the type of title obtained by them, and failed to put into evidence records pertaining to their particular chains of title.

The Court of Common Pleas of Butler County, sitting in equity, issued an injunction to prevent the Petitioners from interfering with the use of the trail by Buffalo Township and the general public. The Pennsylvania Commonwealth Court and the Pennsylvania Supreme Court affirmed the findings of the trial court. The opinions of all these Courts agree that when Buffalo Township agreed to take all financial, legal, and managerial responsibility for the trail and Conrail reserved the

right to re-activate railroad service if the need ever arose, these parties complied with the requirements of the National Trails Systems Act and Pennsylvania's Rails to Trails Act. They also found that there could be no common law "abandonment" of an interest in real estate, under Pennsylvania state law, given the factual findings of the trial court and the lack of evidence of abandonment.

REASONS FOR DENYING THE PETITION

SUMMARY

Nothing in the Pennsylvania Supreme Court decision conflicts with any decision of the United States Supreme Court or any other Court of Appeals. The Petition for Writ of Certiorari cites no United States Supreme Court cases. The Third Circuit Court of Appeals case referenced in the Petitioners' Reasons for Granting the Petition, *Lucas v. Township of Bethel*, 319 F.3d 595 (3d Cir. 2003), specifically concludes that considerations of abandonment and reversion of rights-of-way are to be determined through application of Pennsylvania law. *Lucas* neither interprets a federal statute nor conflicts with any decision from any other Circuit.

This Court addressed issues concerning the National Trails Systems Act in *Presault v. Interstate Commerce Commission*, 494 U.S. 1 (1990). *Presault* found that the National Trails Systems Act was constitutional, thus preventing property interests from reverting under state law.

The Pennsylvania Supreme Court has interpreted the National Trails Systems Act correctly and consistent with opinions from the ICC. Implementing the National Trails Systems Act, the ICC has opined that under its own

regulations, a notice or certificate of interim trail use is not a prerequisite to the establishment of a trail. *Southern Pacific Transportation Co., Exemption*, 1991 WL 108272 (I.C.C. 1991).

This case does not have to involve federal issues. Pennsylvania courts have jurisdiction to determine if real estate has been abandoned. Pennsylvania also has its own Rails to Trails Act, 32 Pa. Cons. Stat. § 5611, *et seq.*, that allows for rail banking of railroad corridors, preventing reversion of property interest. Buffalo Township complied with this Act as well. The Pennsylvania Supreme Court had adequate, independent state law grounds for its decision.

I. Congress Enacted The National Trails Systems Act To Facilitate, Not To Impede, The Preservation Of Transportation Corridors

Congress enacted the National Trails Systems Act to curtail the steady loss of transportation corridors resulting from diminishing railroad use. Congress recognized that the law could serve a dual purpose by preserving these corridors for future transportation needs and by providing current public recreational use. Congress passed Section 1247(d) to establish guidelines to help facilitate the creation of recreational trails, not to create an obstacle to a party who seeks to do so.

The United States Supreme Court, in *Preseault v. Interstate Commerce Commission*, 494 U.S. 1 (1990), held that Section 1247(d) validly prevents a right-of-way from reverting when a formal declaration of trail use is entered by the ICC. The ICC, however, has stated that there need not be a formal declaration of interim trail use for a property to be

used as a trail. *Southern Pacific Trans. Co., Exemption*, 1991 WL 108272 (I.C.C. 1991). Petitioners would have the Court believe that the failure to obtain a declaration of interim trail use constitutes a common law abandonment of a property interest. However, Section 1247(d) states that the ICC "shall not permit abandonment or discontinuance inconsistent or disruptive of [use as a trail]." The Ninth Circuit Court of Appeals has held that, "[t]he Commission's voluntary interpretation is consistent with the plain language of the statute. It achieves the primary objective of the Amendment, i.e., precluding reversions, and it advances the general objectives of the Trails Act." *Washington State Dep't of Game v. Interstate Commerce Comm'n*, 829 F.2d 877 (9th Cir. 1987).

The ICC has no discretion to override the clear congressional mandate of the National Trails Systems Act. Its ministerial function prevents the abandonment of a right-of-way from being consummated if the railroad and trail sponsors enter into a voluntary agreement and the sponsor agrees to accept financial responsibility. *Citizens Against Rails to Trails v. Surface Transp. Bd.*, 267 F.3d 1144, 1153 (D.C. Cir. 2001). Buffalo Township met the ICC requirements by accepting full responsibility of the management of, as well as potential liability for, the trail.

Petitioners confuse abandonment proceedings before the ICC, which are for the purpose of discontinuing the use of the line as a railroad, with actual abandonment of a property interest. While the ICC has jurisdiction to determine if a railroad has the right to discontinue service, it has no jurisdiction to determine whether a real interest in property has been abandoned. State law controls reversionary rights. *Preseault*, 494 U.S. 1 (1990). The Pennsylvania Supreme Court has spoken on this issue, and the United States Supreme Court should not be used to overturn a state court's application of a state's common law.

There is no conflict between the Pennsylvania Supreme Court's opinion and any federal case. All courts addressing this question agree that Pennsylvania law controls the issue of abandonment and the application of the Pennsylvania Rails to Trails statute.

II. The Ruling By The Supreme Court Of Pennsylvania In The Present Case Is In Accord With Circuit Court Rulings And State Law

Petitioners improperly included in their appendix to the Petition for a Writ of Certiorari a copy of *Lucas v. Township of Bethel*, 319 F.3d 595 (3d Cir. 2003). This case is not inconsistent with the decision of the Pennsylvania Supreme Court. The Third Circuit simply remanded the proceedings to the District Court for a determination, applying state law, as to whether or not property had been abandoned.

The terms specifically set forth in the Pennsylvania Rails to Trails Act make it clear why the Petitioners' arguments of property abandonment have no basis in law. The Pennsylvania Rails to Trails Act defines "available railroad right-of-way" as "any railroad right-of-way that is proposed *or approved for* abandonment before the Interstate Commerce Commission, the Public Utility Commission, or other governing agency with jurisdiction in the matter." 32 Pa. Cons. Stat. § 5612 (2002) (Emphasis added). Thus actual approval of abandonment of the rail line by the ICC does not preclude rail banking under the Pennsylvania Rails to Trails Act. In fact, Pennsylvania law makes eventual ICC abandonment a prerequisite to a corridor being available for the State Rails to Trails program.

The Superior Court of Pennsylvania has held that, to show an abandonment,

> the moving party must establish that the dominant tenement had an intent to abandon the easement coupled with either 1) adverse possession by the owner of the servient tenement; 2) obstruction of the right-of-way by the dominant tenement that is inconsistent with its further enjoyment; or 3) affirmative acts by the owners of the dominant tenements that render the use of the right-of-way impossible.

Daddona v. Thorpe, 749 A.2d 1012 (Pa. Super. Ct. 2000) (citing *Gabel v. Cambruzzi*, 616 A.2d 1364, 1367 (Pa. 1992)). Petitioners have proven neither Conrail's intent to abandon its property interest, nor any of the three criteria necessary to demonstrate an abandonment under Pennsylvania law.

The trial court in the present case held that Conrail had not actually abandoned its right of way. But even if Conrail had, other provisions of the Pennsylvania Rails to Trails Act come into play. Section 5614 allows for municipalities to acquire title to railroad beds and authorizes the Pennsylvania Department of Environmental Protection ("DEP") to participate in ICC proceedings. The State Act's specific provision of DEP involvement in rails to trails projects is important in the present case because the DEP was actually involved in the negotiations with Conrail, Buffalo Township, and the ICC. The fact that Conrail engaged in these negotiations, while at the same time reserving rights in the deed, evidences a clear intent to retain property rights, not to abandon them.

Because of the public nature of the property rights in transportation corridors, it is necessary for the Commonwealth to be involved in any abandonment proceedings of a public railroad right-of-way. Traditionally, consent from the Commonwealth was obtained from the Pennsylvania Public Utility Commission ("PUC") through a proceeding to abolish the rail service. *Lacy v. E. Broad Top R.R. & Coal Co.*, 77 A.2d 706 (Pa. Super. Ct. 1951). Although the PUC's role has been reduced by increased involvement of the ICC and the Surface Transportation Board, Pennsylvania law still requires intervention in the "abandonment" process.

The Pennsylvania Rails to Trails Act requires PUC evaluation of recreational trails before it can permit abandonment of a railroad bed even though the ICC has permitted abandonment of service on the line. *CSX Transp. Corp. v. Pub. Util. Comm'n*, 558 A.2d 902 (Pa. Commw. Ct. 1989). The Pennsylvania Rails to Trails Act also requires notification to the DEP and the Pennsylvania Department of Transportation before abandonment can occur. 66 Pa. Cons. Stat. § 2702 requires that the PUC approve removal of tracks at highway crossings. 66 Pa. Cons. Stat. § 2709 provides that a public utility in the railroad business cannot dispose of real property used as a railroad bed without notifying the Department of Transportation, the Game Commission, the Fish and Boat Commission, and the Department of Environmental Resources. Respondents have failed to prove that the PUC approved the abandonment of any property interest. They have, therefore, failed to meet their burden. Even if this Court were to consider review of a state court's interpretation of state law, there would be no logic in selecting the present case for such a review.

CONCLUSION

For all of the foregoing reasons, Respondents respectfully request that this Honorable Court deny the Petition.

Respectfully submitted,

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